

REMARKS

A. Response to Restriction

In response to the restriction, Applicant elects Group I directed to Claims 1-22 and 30-79, this election being with traverse.

The Office Action sets forth the basis for making the restriction as "The inventions II and I are related as process and apparatus for its practice." Although Claims 1-16, 19-22 and 30-79 are apparatus claims, original patent Claims 17-18 are also method claims. Pursuant to MPEP §1450.

"As stated in 37 CFR 1.176(b), the examiner is not permitted to require restriction among original claims of the patent (i.e., among claims that were in the patent prior to filing the reissue application). Even where the original patent contains claims to different inventions which the examiner considers independent or distinct, and the reissue application claims the same inventions, a restriction requirement would be improper. If such a restriction requirement is made, it must be withdrawn." (Emphasis original).

Thus since there are method claims in the original patent, a restriction as against the new method claims 23-29 is not warranted and should be withdrawn.

B. Species Election

The Office Action also asserts a species requirement as between four enumerated species. Applicant provisionally elects Species III with traverse. It is submitted that the Office Action does not provide adequate basis for insisting a species election. Moreover, it is not understood which claims of the Claims 23-79 defined by the enumerated species. For example as between Species I triangular cross-section housing body and Species III housing body with generally circular cross-section, but none of the claims 23-79 appear to include these limitations.

C. New Linking Claim

New Claim 80 has been added. Claim 80 is directed to a device for monitoring structural weakening of a material disposed within a body to be placed at least partially in soil. It is submitted that Claim 80 is thus an apparatus claim properly grouped with the Group I claims and should be examined therewith. Claim 80 includes limitations in means-plus-function form similar to the steps of Claim 23 of Group II. In the event the restriction is not already withdrawn, it is submitted that upon allowance of Claim 80, Claim 23 (and dependent Claims 24-29) should be rejoined and examined.

D. New Claim 81

New Claim 81 is directed to a device for monitoring and as such be directed to elected Group I.

Respectfully submitted,

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